

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TIMOTHY MC CLENDON
Claimant

VS.

IBP, INC

Respondent
Self-Insured

}
}
}
}

Docket No. 172,151

ORDER

Claimant seeks review by the Workers Compensation Appeals Board of the October 23, 1995 Order entered by Administrative Law Judge Floyd V. Palmer. Board Member Gary M. Korte has disqualified himself from participating in this proceeding. Jeffrey K. Cooper has been appointed as Appeals Board Member Pro Tem to participate in this decision pursuant to K.S.A. 1995 Supp. 44-555c(i).

ISSUES

The Order from which claimant appeals was a ruling on Respondent's Motion for Clarification and Protection from Claimant's Demand for Compensation and Claimant's Motion for Penalties and Motion to Compel. The Appeals Board must first determine whether it has jurisdiction to decide this appeal at this juncture of the proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds:

The Administrative Law Judge in his Ruling and Order on Respondent's Motion for Clarification and Protection from Claimant's Demand for Compensation and Claimant's Motion for Penalties, dated October 23, 1995, has set forth the facts pertaining to the motions. A recitation of those facts is unnecessary for purposes of this order.

In ruling upon respondent's motions, the Administrative Law Judge modified his May 12, 1995 preliminary hearing Order. It was that preliminary Order which claimant was seeking to enforce with his Demand for Compensation and Motion for Penalties. The Administrative Law Judge's October 23, 1995 modification and clarification of the May 12, 1995 Order rendered moot claimant's penalty motion and demand. On appeal, claimant challenges the Administrative Law Judge's authority to modify his prior preliminary hearing Order in this manner. However, claimant does not raise the denial of penalties as an issue in this appeal.

As the Appeals Board understands claimant's position, this appeal is not taken to seek review of the Administrative Law Judge's ruling concerning the payment of medical benefits. Instead, claimant contends the Administrative Law Judge cannot modify his earlier ruling where no appeal was taken from that order. The Appeals Board disagrees. A preliminary order does not become a final order when no appeal is taken. It retains its

character as a preliminary order even after the time for review by the Appeals Board has passed. The Appeals Board has held in prior decisions that there is no limitation on the number of preliminary hearings an Administrative Law Judge may hold in a case. Furthermore, the Administrative Law Judge has the jurisdiction and authority to amend, modify and/or clarify a preliminary order as the evidence may dictate or as circumstances may require.

The Appeals Board finds, after examining both K.S.A. 1995 Supp. 44-551 and K.S.A. 44-534a, that the subject order is not a final order that can be reviewed by the Appeals Board pursuant to K.S.A. 1995 Supp. 44-551, nor does it raise a jurisdictional issue that can be reviewed pursuant to K.S.A. 44-534a. This order is a procedural ruling that the Administrative Law Judge had authority to make during the trial of a workers compensation case. The Appeals Board finds it does not have jurisdiction to review such a procedural ruling until such time as it is included in a final award. At that time the Appeals Board would have jurisdiction pursuant to K.S.A. 1995 Supp. 44-551(b)(1).

Wherefore, it is the finding, decision and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the Ruling and Order of Administrative Law Judge Floyd V. Palmer, dated October 23, 1995 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER PRO TEM _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Mark R. Schoenhofer, Wichita, KS
Gregory D. Worth, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Jeff Cooper, Topeka KS
Philip S. Harness, Director